

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES WEBER,

Plaintiff,

ORDER

v.

19-cv-448-wmc

KILOLO KIJAKAZI,  
Acting Commissioner of Social Security,

Defendant.

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On January 12, 2021, the court issued an order remanding this case to the commissioner for further proceedings under sentence four of 42 U.S.C. § 405(g) pursuant to stipulation of the parties. Now before the court is plaintiff James Weber's attorney's petition for supplemental fees pursuant to § 406(b)(1) in the amount of \$4,126.54. (Dkt. #25.) Defendant does not object to this motion. (Dkt. #28)

**Fees under 42 U.S.C. § 406**

As part of its judgment, a court may allow "a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits" awarded to the claimant. § 406(b)(1)(A). The fee is payable "out of, and not in addition to, the amount of [the] past-due benefits." *Id.* Counsel asks the court to approve an attorney fee award in the total amount of \$11,126.54, which represents 25 percent of the auxiliary benefits that was awarded to plaintiff.<sup>1</sup> Having considered the supporting materials filed by plaintiff's attorney, and hearing no objection from plaintiff or defendant, the court will grant the motion. The fees requested by counsel are

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<sup>1</sup> The court notes that counsel was previously awarded fees under 42 U.S.C. § 406(b)(1) in the amount of \$7,000.00. (Dkt. #24.)

reasonable in light of the time she and members of her firm spent on this case and the favorable result he obtained for plaintiff while working on a contingency basis.

Of course, counsel is not allowed to recover both awards. Section 406(b) has been harmonized with the EAJA; though fee awards may be made under both the EAJA and § 406(b), a claimant's attorney must refund to the claimant the amount of the smaller fee. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (explaining that “an EAJA award offsets an award under Section 406(b)”).

### ORDER

IT IS ORDERED that:

1. Counsel’s motion for supplemental attorney fees under 42 U.S.C. § 406(b)(1) (dkt. #25) is GRANTED.
2. The court approves representative fees under § 406(b) in the gross amount of \$11,126.54.
3. Counsel may retain the \$7,000.00 previously awarded in partial satisfaction of the § 406(b) award.
4. The net amount of \$4,126.54 shall be disbursed by the Commissioner from any of plaintiff’s past-due benefits still being withheld and in accordance with agency policy.

Entered this 8th day of September, 2023.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge